

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local	)	
Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation	)	
Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**FURTHER NOTICE OF PROPOSED RULEMAKING**

**COMMENTS OF  
LAUREL HIGHLAND TELEPHONE COMPANY  
YUKON-WALTZ TELEPHONE COMPANY**

## **I. Introduction and Summary**

Laurel Highland Telephone Company and Yukon-Waltz Telephone Company (Laurel-Yukon) of Stahlstown and Yukon, Pennsylvania, respectively, submit comments to the Federal Communications Commission (Commission) in response to the Further Notice of Proposed Rulemaking (FNPRM) released on November 18, 2011 in the above-captioned proceeding.

Laurel-Yukon represents two rural local exchange carriers under common ownership, and over 5,600 customers in the Commonwealth of Pennsylvania. Laurel-Yukon is the recipient of federal universal service support, has competition present in its service area, and is otherwise affected by the Commission's decision in this proceeding.<sup>1</sup> Laurel-Yukon will limit its comments to issues surrounding the Commission's decision to phase-out support in RLEC areas where an unsubsidized competitor, or competitors, provides voice and broadband service to 100% of the RLEC service area, and to the FNPRM proposal to reduce support where the unsubsidized competitor(s) covers less than 100% of the RLEC's area.

## **II. Eliminating Support for Areas with an Unsubsidized Competitor**

In the ICC/USF Order, the Commission adopts a new policy to phase-out high cost support received by incumbents in areas where an unsubsidized competitor, or competitors, covers 100% of the incumbent's study area.<sup>2</sup> In the FNPRM, the Commission requests comment on 1) the proper method for determining whether a specific study area is 100% overlapped by an unsubsidized competitor(s), and 2) whether support should be reduced in cases where the incumbent study area is covered less than 100% by unsubsidized competition.<sup>3</sup>

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<sup>1</sup> Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011 (*ICC/USF Order*)

<sup>2</sup> *ICC/USF Order*, at 281

<sup>3</sup> FNPRM Section XVII. D.

While Laurel-Yukon has serious concerns regarding the Commission's decision to eliminate support in areas with 100% overlap, especially in light of the fact that it left unaddressed issues surrounding RLECs' continuing carrier of last resort (COLR) responsibilities<sup>4</sup>, comments will be offered on how to proceed with this decision. Laurel-Yukon will first offer comments on the process for determining whether an RLEC's study area is 100% overlapped by an unsubsidized competitor, or competitors, and then will comment on the Commission's proposal to reduce support in cases where the unsubsidized overlap is less than 100%

#### **A. Process for Identifying Areas of 100% Overlap**

The Commission seeks comment on the proposed methodology for determining whether and to what extent the competitive overlap exists and how the affected Eligible Telecommunication Carrier (ETC) can challenge the accuracy of the purported overlap. Also discussed is the Commission Staff's effort to identify such areas through TeleAtlas Wire Center Boundaries and National Broadband Map data. Laurel-Yukon suggests that the only way the process for determining whether 100% competitor overlap exists is through a petition in front of the relevant state commission, such as the Pennsylvania Public Utilities Commission. While the data utilized by the Commission's Staff is useful for determining the estimated scope of the Commission's decision, it in no way, shape, or form should be used as a final determinant. Instead, the process should hinge on a proceeding in front of the regulatory body closest to the situation.

The rural association groups outlined a process whereby a petition is filed by an unsubsidized competitor showing that 1) it is a state-certified carrier or ETC, 2) it can deliver both broadband and quality voice services to 100% of the households in the RLEC's area, and in a manner comparable to the RLEC, 3) it offers each of these services on a stand-alone basis at rates that are reasonably comparable to those offered by the RLEC, and 4) it neither receives high-cost support of any kind nor cross-subsidizes its operations in the specific area for which it is making its request and showing.<sup>5</sup> Laurel-Yukon stresses that the petition filing must be made at the state

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<sup>4</sup> See Petition for Reconsideration and Clarification filed by NECA, OPASTCO, and WTA on December 29, 2011 at 18-19 (*Rural Association PFR*)

<sup>5</sup> Comments of NECA, NTCA, OPASTCO, and WTA (rural associations), April 28 2011 at 52-53

level. In fact, the Pennsylvania Public Utilities Commission presented a lengthy legal memorandum regarding why the Commission cannot eliminate state-level COLR requirements.<sup>6</sup>

Several state commissions and the national consumer advocate association agree in theory with the above process. In reference to a question posed in the August 3, 2011 Public Notice regarding the role of the states in administering a process to determine which areas are served by an unsubsidized competitor<sup>7</sup>, the New York Public Service Commission stated “each of these functions builds on the local expertise of state commissions and would allow their knowledge to inform the process and increase overall efficiency of the program.”<sup>8</sup> The National Association of State Utility Consumer Advocates (NASUCA) added “that if such a process is adopted, the states should administer it.”<sup>9</sup> While Laurel-Yukon believes the Commission can and should provide some guidelines around how this process will work, it should be in large part left to the states and existing procedural rules to handle.

Finally, Laurel-Yukon strongly believes that the “list of companies for which there is a 100 percent overlap” to be published by the Wireline Competition Bureau (WCB)<sup>10</sup> should be treated, at most, as a guide by which unsubsidized competitors can determine if petitions may be filed at the relevant state commission(s). This list, to be based on the process adopted by the Commission, and generated presumably using data available to the WCB, should in no way supplant or prejudice any resulting state commission investigations into whether a supposed unsubsidized competitor meets the criteria for 100% coverage of an RLEC’s area. In many cases this issue will be a going concern for the RLEC and is simply just too important for anything but a full and complete determination by a state commission.

## **B. Adjusting Support Levels in Areas with Less than 100% Overlap**

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<sup>6</sup> See Comments of Pennsylvania Public Utilities Commission, August 23, 2011

<sup>7</sup> See August 3, 2011 Public Notice at 7

<sup>8</sup> New York PSC August 24, 2011 Comments at 7

<sup>9</sup> NASUCA August 24, 2011 Comments at 90

<sup>10</sup> FNPRM at 1070

The Commission requests comment on whether and how support should be adjusted in areas where there is less than 100% competitive overlap.<sup>11</sup> This proposal should not be adopted, as it in essence assumes COLR and ETC responsibilities have been eliminated, which clearly is not the case.

In order for high cost support to be “adjusted” in cases when less than 100% of an RLEC’s area is overlapped by an unsubsidized competitor, the Commission must assume that COLR and ETC responsibilities no longer exist. The COLR and ETC mandates exist in order to ensure service is made available to all who request such service, regardless of where the customer lives or how much it costs to serve the customer. Universal service support exists to, among other things, provide additional funding to COLRs and ETCs where providing service to all within a given area would not be economically feasible, given the legal mandate that rates are reasonably comparable. If a competitor serves less than 100% of the RLEC’s area, it is quite likely that the competitor’s chosen service area consists of the lowest cost customers, which thus leaves the higher cost customers as the sole responsibility of the COLR. Unless the Commission wishes to disaggregate universal service support, where it is quite likely that demand for high cost support will increase as the higher costs are left to be recovered over fewer customers<sup>12</sup>, this type of policy will not work and should be rejected.

Even if one accepts the premise underlying the Commission’s decision to eliminate support, over time, in areas where a competitor, or competitors, completely overlaps an RLEC’s service areas; namely, that if the competition can offer services comparable to those offered by the incumbent without need for high-cost support then the area must be “economic” to serve, this rationale cannot be extended to areas with less than 100% overlap. In addition, there are potential issues in areas with 100% overlap in that there is still only one carrier of last resort, and if the competition exits the market, it can no longer be assumed that the market is “economic” to serve and thus no longer requires high cost support. The Commission must then decide how to reinstate support to the remaining carrier. This situation is only exacerbated in situations of less than 100% overlap – the COLR must still exist and offer service to all who request it, but must

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<sup>11</sup> FNPRM at 1073

<sup>12</sup> See also Rural Association April 28, 2011 Comments at 51

then face an unknown level of support for its COLR service, must more than likely remain under more onerous regulation than the competitor, and is therefore more likely to have prices constrained. In the end, even if the incumbent is allowed to charge market-based prices, the customers in the non-overlapping areas will be made to suffer higher rates for (hopefully) comparable service to that received by other customers in the same study area.

### **III. Conclusion**

For the reasons stated above, Laurel-Yukon requests the Commission adopt a state commission-based process for determining whether a competitive carrier can cover 100% of a specific RLEC's service area. Furthermore, Laurel-Yukon recommends the Commission abandon its proposal to reduce support in areas where the unsubsidized competitor, or competitors, covers less than 100% of an RLEC's service area.

RESPECTFULLY SUBMITTED

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James J. Kail  
President/CEO  
Laurel Highland Telephone Company  
Yukon-Waltz Telephone Company

January 18, 2012